

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	
)	Case No. 2:12-cv-01282-JLR
Plaintiff,)	
)	CITY OF SEATTLE’S UNOPPOSED
v.)	MOTION FOR COURT APPROVAL OF
)	REVISIONS TO SEATTLE POLICE
CITY OF SEATTLE,)	DEPARTMENT’S USE OF FORCE
)	POLICIES
Defendant.)	
)	NOTE ON MOTION CALENDAR: August
)	16, 2019
)	
)	
)	

The City of Seattle moves for an order approving the proposed revisions of the Seattle Police Department (“SPD”) to its Use of Force Policies. The Department of Justice (“DOJ”) and the Monitor have approved the proposed revisions. They are attached in redline format as Exhibits A-G.¹

I. Background

The Consent Decree required SPD to draft or revise policies addressing its core topics. The City drafted, revised, and implemented those policies with the assistance of the Monitor, the

¹ Grammatical and formatting changes are not reflected in the redline. To make the redline easier to read, if text was moved, unchanged, that change is not reflected.

1 Department of Justice (“DOJ”), and the Community Police Commission (“CPC”), and with the
2 approval of the Court and Monitor in the years leading to the Court’s January 2018 ruling that the
3 City had achieved full and effective compliance with the Consent Decree.

4 During the sustainment period following full and effective compliance, the City, DOJ, and
5 the Monitor agreed that SPD would review Consent-Decree-mandated policies annually, consult
6 with the DOJ and Monitor about any proposed changes, and seek Court approval of any changes.
7 *See* Phase II Sustainment Period Plan (dkt. 444) at 10. In accordance with the schedule
8 established by the Court-approved Sustainment Plan, the City now submits revisions to SPD’s
9 Use of Force Policy, set forth in Title 8 of the Seattle Police Manual.

10 **II. SPD’s Policy Review Process**

11 SPD’s Audit, Policy, and Research section (“APRS”) is primarily responsible for the
12 policy review process at SPD. APRS is led by a captain who reports to the assistant chief who
13 oversees SPD’s Professional Standards Bureau (“PSB”). Within APRS, a “policy squad”
14 consisting of a sergeant and three detectives takes responsibility for policy reviews. APRS
15 currently maintains a calendar that ensures that every policy in the Seattle Police Manual is
16 reviewed at least once every three years. APRS reviews Consent Decree policies annually.

17 SPD’s standing policy committee helps guide APRS’s work. The committee, comprised
18 of the APRS Captain, the Assistant Chief overseeing PSB, SPD’s Executive Director of Legal
19 Affairs, and its Chief Operating Officer, meets weekly (along with APRS officers assigned to the
20 policies under review) to discuss scheduled policy reviews and any acute policy concerns that
21 have come to the committee’s attention. Those concerns can be raised by any SPD unit or bureau
22 chief, but they often come directly from the recommendations of SPD’s Force Review Board,
23 which meets weekly to review the most serious uses of force by SPD officers, as well as less

1 serious uses of force as dictated by policy. Patrol officers are also encouraged to contact APRS
2 directly to discuss policy issues.

3 APRS also incorporates policy suggestions from many sources. The Office of Police
4 Accountability (“OPA”) routinely submits letters to the Chief of Police, many of which focus on
5 policy change recommendations.² The Office of the Inspector General for Public Safety (OIG)
6 participates in SPD policy discussions, in addition to making policy recommendations through
7 reports and audits. In addition, APRS has shared its policy review calendar with the CPC, which
8 offers suggestions about policy changes.

9 For most policies, APRS develops proposed changes in coordination with the Assistant
10 Chief overseeing PSB by consulting with SPD subject-matter experts and the SPD units most
11 impacted by the policy under review. When appropriate, APRS detectives also reach out to police
12 departments across the country to review policies addressing the same topics. Once APRS has
13 completed proposed policy changes, the standing policy committee reviews them and, if it
14 approves, forwards the revised policy to the Chief of Police (or her designee, typically the Deputy
15 Chief) for final approval.

16 Consent Decree policies are reviewed in much the same way, with a few additional steps.
17 Once APRS and the policy committee have approved proposed changes, the City forwards the
18 proposed changes to the Monitoring Team and DOJ for review and input. Where the DOJ or
19 Monitoring Team identify concerns, the City discusses those concerns and, where appropriate,
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21

22 ² OPA publishes its Management Action Recommendations and SPD’s responses at
23 <https://www.seattle.gov/opa/management-action-recommendations>.

1 makes additional modifications. The City also solicits feedback from OIG, OPA, and CPC. Once
2 that process is complete, the City submits the policies to the Court for approval.

3 Once a policy change receives final approval (from the Chief of Police, her designee, or
4 the Court, depending on the policy), SPD uses its “e-Directive” system to notify every officer and
5 civilian employee. The e-Directive system forwards policy changes to everyone at SPD, it
6 requires each employee impacted by the policy (for the use of force policy, this includes all sworn
7 personnel) to answer online questions about the policy and verify that he or she has reviewed it.
8 Unit supervisors are notified and expected to take corrective action when officers or employees in
9 their units have not completed e-Directive certifications. For policy changes that require training
10 to implement, SPD also ensures that each officer mandated to complete the training has done so.

11 **III. Proposed Changes to Use of Force Policy**

12 The proposed revisions to Title 8 accomplish several goals. First, the revisions bring greater
13 consistency to force-related terms and definitions. A second set of edits is intended to increase
14 operational efficiency. Third, SPD, working closely with the Monitor, has developed a new policy
15 for the use of patrol canines. Finally, several of the proposed policy changes incorporate OPA
16 recommendations.

17 *1. A majority of the proposed revisions consolidate and refine the definitions and usage of* 18 *force-related terms.*

19 The proposed edits reduce repetition and provide consistency by consolidating definitions
20 that used to be in section 8.200 with the other definitions in 8.050. The proposed revisions also
21 address minor variations in terminology to avoid confusion. For example, the requirement that
22 force must be “objectively reasonable, necessary, and proportional”—which appears in numerous
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1 places throughout Title 8—is now always stated using those exact words, instead of sometimes
2 using slightly different wording as shorthand.

3 Another example includes replacing the term “serious physical injury” with “great bodily
4 harm.” The current policy treats these phrases as interchangeable. By consistently using “great
5 bodily harm,” a term which is codified and defined under Washington state law, the proposed
6 revisions improve clarity and uniformity. *See* Rev. Code Wash. 9A.04.110(4)(c) (defining “great
7 bodily harm”). For the same reason, “substantial physical injury” has been replaced by “substantial
8 bodily harm.” *See* Rev. Code Wash. 9A.04.110(4)(b) (defining “substantial bodily harm”).

9 In addition, small variations in the definitions used in Title 8 and the SPD Force
10 Investigation Team (FIT) manual have been standardized.

11 *2. SPD proposes several changes that will increase operational efficiency.*

12 Section 8.500 has been edited to formalize SPD’s existing practice of having operations
13 lieutenants conduct the final review chain-of-command review for most Type I force. As noted
14 by the Monitor and DOJ last October, this delegation is already current practice and it does not
15 reduce the quality of the review. Dkt. 497-1 at 23. It is frequently practical and convenient for the
16 operations lieutenant, instead of the captain, to review Type I force, because of the great volume
17 of material. However, as noted by the Monitor and DOJ, it is important that delegation be done
18 appropriately and not in a way that undermines effective review. *See id.* The operations lieutenant
19 is well positioned to ensure effective review. There is only one operations lieutenant per precinct,
20 which preserves continuity of command. Moreover, the operations lieutenant has an active role in
21 field supervision, is regularly called upon to serve as the acting captain, and communicates
22 frequently with the captain. The operations lieutenant is thus in a strong position to identify and,
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1 with the captain, address any potential issues with Type I force overall or with a particular officer's
2 Type I force.

3 Another minor operational change involves FIT. Language is added to 8.300-POL-9
4 regarding inadvertent contact with a subject's neck. This edit relieves FIT of screening and
5 investigating when an officer makes such contact while using a control technique, when the contact
6 is "momentary," and when there is no risk that blood or oxygen flow was restricted. This revision
7 appropriately maintains FIT's efforts on more serious uses of force.

8 Further edits are made to clarify lieutenants' and captains' existing authority to reclassify
9 force at a higher or lower level if warranted by the sergeant's investigation. *See* 8.400-POL-2(11).
10 The chain has in the past been reluctant to reclassify force, generally deferring to FRU or FRB.
11 Correcting misclassifications of force early on in the review process will improve efficiency.

12 *3. The most substantive change is the adoption of a new, proposed canine policy.*

13 Based on the insights of the Force Review Board, SPD command staff, OPA, OIG, the
14 Monitor, and DOJ, the Department identified the need for a new policy addressing the use of patrol
15 canines. An interim policy took effect on March 20, 2019, and was accompanied by substantial
16 training efforts. The Deputy Chief of Operations and the Assistant Chief of Special Operations
17 met with members of the K-9 unit and the training sergeant to reiterate the Department's
18 expectations on the use of canines as a force tool. In addition, six of the canine officers received
19 additional, outside training to support implementation of the new policy. In parallel, the Deputy
20 Chief of Operations oversaw the drafting of a robust permanent policy, with substantial technical
21 assistance from the Monitor. The City now presents this policy to the Court.

22 The policy includes specific language governing when officers are required to release a
23 canine's bite. 8.300-POL-1(13) (Bite must be released "at the first possible moment the canine can

1 be safely released.”). This provision is intended to eliminate any possibility of confusion as to
2 when and how a handler should release a dog from a bite.

3 The policy also addresses the circumstances under which canines may be deployed. The
4 policy provides that, in the absence of explicit supervisor authorization, canines will be deployed only
5 in investigations of enumerated felony crimes and misdemeanors that present a potential for violence.
6 8.300-POL-1(3) (listing out specific felonies and misdemeanors). The policy also places strong
7 restrictions on the use of canines in investigations with a possible juvenile subject. 8.300-POL-1(8).
8 Also, importantly, officers are explicitly prohibited from using a canine to gain pain compliance.
9 8.300-POL-1(9).

10 To ensure that canines are deployed in appropriate circumstances, canine handlers are
11 required to obtain a briefing of the incident beforehand. 8.300-POL-1(4).

12 It is significant that the new policy defines a canine-officer team is a “single officer unit.”
13 8.300-POL-1(6). That means officers cannot consider the dog as a second, back-up officer. Rather,
14 canine officers must request back-up when needed in the same way that other officers do.

15 The policy also reiterates the reporting and investigation requirements that apply for any
16 canine use of force, regardless whether a bite is accidental or otherwise. 8.300-POL-1(16) to (18).

17 Finally, a new section is added to Title 16, addressing patrol operations, that contains
18 procedures and tasks associated with the canine unit.

19 *4. A number of policy changes incorporate OPA management action recommendations.*

20 In addition to investigating allegations of misconduct, OPA recommends policy changes
21 to SPD when its investigations indicate that issues with Department policy, rather than actions of
22 individual officers, gave rise to a complaint. Those investigations result in a finding of “Not
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1 Sustained – Management Action” and form the basis of OPA’s management action
2 recommendations.

3 Examples of these recommendations include a new definition of “roadblock” in 8.050 and
4 additional language about roadblocks in 8.300-POL-6(4). These edits clarify what a roadblock is
5 and when it is considered to be reportable force. In another example, the de-escalation policy is
6 revised in order to more clearly distinguish between a threat of force (which is is not de-escalation),
7 and a warning given in a calm and explanatory manner (which can be an example of de-escalation).
8 OPA also recommended clarifying that each application of a taser must be objectively reasonable,
9 necessary, and proportional—regardless of how the taser is being used. 8.300-POL-2(4).

10 **IV. Conclusion**

11 For the reasons stated above, the City respectfully requests that the Court approve the
12 proposed revisions to SPD’s policies.

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15 DATED this 31st day of July, 2019.

16 For the CITY OF SEATTLE

17
18 PETER S. HOLMES
Seattle City Attorney

19 s/ Kerala T. Cowart
20 Kerala T. Cowart, WSBA #53649
Assistant City Attorney
21 Seattle City Attorney’s Office
701 Fifth Avenue, Suite 2050
22 Phone: (206) 733-9001
Fax: (206) 684-8284
23 Email: kerala.cowart@seattle.gov

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CERTIFICATE OF SERVICE

I hereby certify that on July 31st, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Brian T. Moran	bmoran@usdoj.gov
Christina Fogg	Christina.Fogg@usdoj.gov
Matt Waldrop	james.waldrop@usdoj.gov
Gregory Colin Narver	gregory.narver@seattle.gov
Kerry Jane Keefe	kerry.keefe@usdoj.gov
Peter Samuel Holmes	peter.holmes@seattle.gov
Jeff Murray	jeff.murray@usdoj.gov
Ronald R. Ward	Ron@wardsmithlaw.com
Timothy D. Mygatt	timothy.mygatt@usdoj.gov
Gary T. Smith	gary.smith@seattle.gov
Hillary H. McClure	hillarym@vjmlaw.com
David A. Perez	dperez@perkinscoie.com
Anna Thompson	annathompson@perkinscoie.com
Kristina M. Detwiler	kdetwiler@unionattorneysnw.com
Merrick Bobb	mbobb@pacbell.net
Bruce E.H. Johnson	brucejohnson@dwt.com
Eric M. Stahl	ericstahl@dwt.com

DATED this 31st day of July, 2019, at Seattle, King County, Washington.

s/ Kerala T. Cowart
Kerala T. Cowart, WSBA #53649
Assistant City Attorney
E-mail: kerala.cowart@seattle.gov